

780CMR R5-6-02-E1.doc

Amend Regulation R5 by providing a single Hearings Officer in lieu of a three (3) member License Review Committee as presented below (this approach is in effect on a trial basis for six (6) months and additionally this amendment is to be retroactive to June 11, 2002 – the day said amendment was voted by the BBRS):

(1) In Section R5.1.2 Definitions, **DELETE** the term “*License Review Committee*” and **ADD** the term “*Hearings Officer*”, as follows (“strikeout” deletes existing language and “underlining” creates new, “by Emergency language”) – note that the term “Hearings Officer” must be alphabetically repositioned within R5.1.2 so that the new term precedes the term “*Licensed Designee*”):

Hearings Officer ~~**License Review Committee (Committee)**~~: The Hearings Officer is the person selected ~~Committee(s)~~ established by the Chairman of the BBRS to carry out the disposition of complaints against licensed *construction supervisors*. The Hearings Officer shall be a member of the BBRS.

(2) **AMEND** Section R5.1.5 to read:

R5.1.5 Hearings Officer ~~**License Review Committee**~~: The Chairman of the BBRS shall appoint a Hearings Officer who shall be a member of the BBRS ~~License Review Committee~~, hereafter referred to as the “Committee”, which shall consist of any three members of the BBRS who shall serve for one year or until a ~~their~~ successors are appointed, whichever is later. ~~The said Chairman shall appoint a Chairman of the Committee who shall serve until his successor is appointed. The Chairman of the BBRS may establish and abolish as many Committees as he/she feels appropriate from time to time./~~

(3) **AMEND** Section R5.1.6 to read:

R5.1.6 Meetings: The Hearings Officer ~~Committee~~ shall convene Licensed Construction Supervisor Complaint Hearings ~~meet~~ at such times as the Hearings Officer ~~Chairman~~ deems it necessary to carry out his/her ~~its~~ function established herein by the BBRS.

(4) **AMEND** Section R5.2.9.1 to read:

R5.2.9.1 Complaints: Upon receipt of a written complaint from a building official, or upon written complaint from other persons, or upon complaint of the Board itself, the Hearings Officer ~~License Review Committee in its discretion~~, shall determine whether or not a hearing shall be held. It shall not be considered as a complaint if such work was performed prior to the Licensed Construction Supervisor ~~his/her~~ being licensed or prior to January 1, 1982, whichever is later.

(5) **AMEND** Section R5.2.9.2 to read:

R5.2.9.2 Hearings on Complaints: If the Hearings Officer ~~Committee~~ shall so determine that a hearing shall be held, he/she ~~it~~ shall give at least seven days notice to the complainant and license holder in accordance with 780 CMR 118.6. The sending of notice to the address recorded on the records of the BBRS shall be deemed sufficient notice to the license holder.

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(6) AMEND Section R5.2.9.4 to read:

R5.2.9.4 Continuation of Hearings: The Hearings Officer Committee in his/her ~~its~~ discretion may continue the date for hearing or in his/her discretion and upon request by the license holder or complainant may continue the date for hearing or the Committee itself.

(7) AMEND Section R5.2.9.5 to read:

R5.2.9.5 Timing of Decision: The Hearings Officer Committee shall make a decision within ten days after the hearing. A written decision shall be issued within 30 days of the hearing date. Failure to render a decision within 30 days shall not affect the validity of any such decision or appeal.

(8) AMEND Section R5.2.9.6 to read:

R5.2.9.6 Decision ~~Vote of the Hearings Officer License Review Committee~~: The Hearings Officer is authorized to determine and issue decisions relative to Licensed Construction Supervisor complaints via the process set forth in this Regulation (780 CMR R5). ~~A vote of at least two members of the Committee is required to make a decision pursuant to 780 CMR R5.2.3.~~

(9) AMEND Section R5.2.9.6.1 to read:

R5.2.9.6.1 Decisions: ~~The~~ This decision of the Hearings Officer shall be final and binding upon the license holder and the complainant. If the Hearings Officer Committee votes to revoke or suspend the license of a *construction supervisor* at the time of the hearing, the holder shall immediately surrender said license to the Hearings Officer Committee. The Hearings Officer committee may, at his/her ~~its~~ discretion, determine that instead of suspension or revocation, the actions of the license holder warrant a letter of warning be placed on file with the BBRs. Said letter of warning will be referenced in the event of future complaints against the license holder. Future complaints against a license holder who has received letter of warning may result in a suspension or revocation of the license after a hearing before the Hearings Officer License Review Committee. The Hearings Officer Committee may, at his/her ~~its~~ discretion, ~~vote to~~ order the license holder to take the Construction Supervisor License ~~license~~ examination or re-examination. A decision of the Hearings Officer that orders the Licensed Construction Supervisor to take the Construction Supervisor License examination or re-examination ~~Votes for examination or re-examination~~ may be rendered even if the Hearings Officer Committee has determined ~~voted~~ to suspend, revoke or issue a letter of warning against the license holder.

(10) AMEND Section R5.2.9.7 to read:

R5.2.9.7 Suspension, Revocation or Continuance: If, after notice has been duly given, a licensee shall not attend a hearing, the Hearings Officer Committee may in his/her ~~its~~ discretion immediately suspend/revoke said license or proceed with the hearing so scheduled and make decision on the evidence so presented, or continue the hearing to another date.

(11) **AMEND** Section R5.2.9.8 to read:

R5.2.9.8 Notice of Suspension, Revocation, Letter of Warning or Order of Examination: In the event that the Hearings Officer Committee determines to suspend, revoke or issue a warning against said license holder pursuant to this hearing or, if the Hearings Officer Committee orders ~~votes to require~~ the license holder to take an examination or re-examination, the license holder, upon notice of the written decision, shall immediately comply with said orders. A refusal to comply shall automatically revoke the licensee's right to supervise construction.

(12) **AMEND** Section R5.2.9.8.1 to read:

R5.2.9.8.1 Terms of Suspension: Suspension by the Hearings Officer Committee shall be for a definite term.

(13) **AMEND** Section R5.2.9.8.2 to read:

R5.2.9.8.2 Reapplication: Any licensee whose license has been revoked by the Hearings Officer Committee may reapply for a license in accordance with these Rules and Regulations only after seeking and receiving approval to reapply from the BBRS Committee.

(14) **AMEND** Section R5.2.10 to read:

R5.2.10 Appeal: Any person aggrieved by a decision of the Hearings Officer may, in writing, request review of said decision by the BBRS (If the Licensed Construction Supervisor determines not to seek administrative review by the BBRS then appeal of said decision shall be in accordance with Section R5.2.10.1, below).The BBRS may or may not review such decision at its discretion. Such review is an administrative review and is not to be construed as a second Hearing on the same complaint(s). The BBRS may concur with the decision or not. If the BBRS does not concur with the decision, the BBRS shall remand the case back to the Hearings Officer with written reason as to why the case is being remanded and the Hearings Officer shall re-open the case for further consideration and decision.

If the BBRS determines that the decision is acceptable a record of such determination shall be made and the decision stands and appeal of said decision shall be in accordance with Section R5.2.10.1.

~~**R5.2.10 Appeal:** Any person aggrieved by a decision of the Committee may appeal such decision to a court of law or equity in conformance with M.G.L. c. 30A, § 14.~~

(15) **ADD** Section R5.2.10.1 to read:

R5.2.10.1 Appeal to a court: Any person aggrieved by a decision of the Hearings Officer may appeal such decision to a court of law or equity in conformance with M.G.L. c. 30A, § 14.

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(16) **AMEND** Section R5.2.15.4 to read:

R5.2.15.4 Willful Violation: Any licensee who shall willfully violate 780 CMR R5.2.15.1, 5.2.15.2 or 5.2.15.3 or any other Sections of 780 CMR R5 and any procedures, as amended, shall be subject to revocation or suspension of license by the BBS in accordance with the applicable complaint requirements of this Regulation (780 CMR R5) ~~Committee~~.